

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 2294 of 1986

For Approval and Signature:

Hon'ble MISS JUSTICE R.M. DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO
1 to 5 : NO

RAMANLAL AMBALAL PATEL

Versus

BARODA MUNICIPAL CORPORATION

Appearance:

MR MUKUND M DESAI for Petitioner
MR PRANAV G DESAI for Respondent No. 1
RULE SERVED for Respondent No. 3

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 12/06/2000

ORAL JUDGEMENT

Neither of the learned advocates is present on call.

2. The petitioner before this Court is one Ramanlal

Ambalal Patel who was appointed as a Sainik in the Fire Brigade of the respondent Municipal Corporation [hereinafter referred to as, 'the Corporation'] in the year 1980. After successfully completing the period of probation, he was confirmed with effect from 1st August, 1981. It appears that in the year 1984 ie., on 27th June, 1984, at around 9.45 a.m., the petitioner was assigned duty on an Ambulance which he refused to accept. He was, therefore, assigned another duty at 10.05 a.m. which too he refused to accept. The petitioner was thus alleged to have committed misconduct of insubordination and negligence towards the duty. Disciplinary inquiry was initiated against the petitioner for the aforesaid misconduct and after completion of the departmental inquiry, by an order dated 21st April, 1986, he was ordered to be removed from service. Feeling aggrieved, the petitioner had preferred the present petition.

3. It appears that the present petition had come up for final hearing before this Court [Coram : Hon'ble Mr. Justice C.K Buch] on 7th April, 2000. Learned advocate Mr. M.M Desai appeared for the petitioner and had informed the Court that pending petition, the petitioner had met with a homicidal death by committing suicide. Learned advocate Mr. P.G Desai appearing for the Corporation had submitted that the petitioner could have availed of the remedy of departmental appeal, however, he did not avail of the alternative remedy. Further, on perusal of the memo, the petitioner appears to have contended that the evidence led in the course of departmental inquiry was not properly appreciated by the disciplinary authority. However, no allegation has been made with regard to the manner in which departmental inquiry was conducted against the petitioner. It is not even alleged that any of the principles of natural justice or fair-play had been violated while conducting the departmental inquiry. At that stage, a request was made that the matter be placed before Lok Adalat so that the same can be settled. However, even before the Lok Adalat, learned advocate Mr. M.M Desai did not remain present. The matter has, therefore, been referred back to the Court.

4. The petition requires to be dismissed on the following grounds :-

[A] Though the petitioner had died pending petition, the heirs and legal representatives of the petitioner have not been brought on the records. The petition, therefore, requires to be dismissed for non-prosecution.

[B] The petitioner had an alternative efficacious remedy of departmental appeal which he had not availed of. The petitioner could have raised an industrial dispute also which too he did not raise. The petition, therefore, requires to be dismissed on the ground of availability of statutory alternative remedies also.

[C] This Court exercising its extra-ordinary jurisdiction under Article 226 of the Constitution of India cannot reappreciate the evidence which has once been appreciated by the disciplinary authority and the finding recorded by the disciplinary authority cannot be substituted as was sought by the petitioner. There being no breach of principles of natural justice or fair play, nor there being challenge to the manner in which the disciplinary proceedings were conducted against the petitioner, the question of interfering with the order of punishment does not arise.

The petition is accordingly dismissed. Rule is discharged. Interim relief is vacated. The parties shall bear their own costs.

Prakash*